

# STATE OF NEW YORK

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4520

2017-2018 Regular Sessions

## IN SENATE

February 16, 2017

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Introduced by Sen. AKSHAR -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

AN ACT to amend the workers' compensation law, in relation to the schedule of compensation in case of disability

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Paragraph w of subdivision 3 of section 15 of the workers'  
2 compensation law, as amended by chapter 6 of the laws of 2007, is  
3 amended to read as follows:

4 w. Other cases. In all other cases of permanent partial disability,  
5 the compensation shall be sixty-six and two-thirds percent of the  
6 difference between the injured employee's average weekly wages and his  
7 or her wage-earning capacity thereafter in the same employment or other-  
8 wise. Compensation under this paragraph shall be payable during the  
9 continuance of such permanent partial disability, but subject to recon-  
10 sideration of the degree of such impairment by the board on its own  
11 motion or upon application of any party in interest however, all compen-  
12 sation payable under this paragraph shall not exceed (i) five hundred  
13 twenty-five weeks, beginning at the date of injury, in cases in which  
14 the loss of wage-earning capacity is greater than ninety-five percent;  
15 (ii) five hundred weeks, beginning at the date of injury, in cases in  
16 which the loss of wage-earning capacity is greater than ninety percent  
17 but not more than ninety-five percent; (iii) four hundred seventy-five  
18 weeks, beginning at the date of injury, in cases in which the loss of  
19 wage-earning capacity is greater than eighty-five percent but not more  
20 than ninety percent; (iv) four hundred fifty weeks, beginning at the  
21 date of injury, in cases in which the loss of wage-earning capacity is  
22 greater than eighty percent but not more than eighty-five percent; (v)  
23 four hundred twenty-five weeks, beginning at the date of injury, in  
24 cases in which the loss of wage-earning capacity is greater than seven-  
25 ty-five percent but not more than eighty percent; (vi) four hundred

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

LBD09483-01-7

1 weeks, beginning at the date of injury, in cases in which the loss of  
2 wage-earning capacity is greater than seventy percent but not more than  
3 seventy-five percent; (vii) three hundred seventy-five weeks, beginning  
4 at the date of injury, in cases in which the loss of wage-earning capac-  
5 ity is greater than sixty percent but not more than seventy percent;  
6 (viii) three hundred fifty weeks, beginning at the date of injury, in  
7 cases in which the loss of wage-earning capacity is greater than fifty  
8 percent but not more than sixty percent; (ix) three hundred weeks,  
9 beginning at the date of injury, in cases in which the loss of wage-  
10 earning capacity is greater than forty percent but not more than fifty  
11 percent; (x) two hundred seventy-five weeks, beginning at the date of  
12 injury, in cases in which the loss of wage-earning capacity is greater  
13 than thirty percent but not more than forty percent; (xi) two hundred  
14 fifty weeks, beginning at the date of injury, in cases in which the loss  
15 of wage-earning capacity is greater than fifteen percent but not more  
16 than thirty percent; and (xii) two hundred twenty-five weeks, beginning  
17 at the date of injury, in cases in which the loss of wage-earning capac-  
18 ity is fifteen percent or less. For those claimants classified as perma-  
19 nently partially disabled who no longer receive indemnity payments  
20 because they have surpassed their number of maximum benefit weeks, the  
21 following provisions will apply:

22 (1) There will be a presumption that medical services shall continue  
23 notwithstanding the completion of the time period for compensation set  
24 forth in this section and the burden of going forward and the burden of  
25 proof will lie with the carrier, self-insured employer or state insur-  
26 ance fund in any application before the board to discontinue or suspend  
27 such services. Medical services will continue during the pendency of any  
28 such application and any appeals thereto.

29 (2) The board is directed to promulgate regulations that establish an  
30 independent review and appeal by an outside agent or entity of the  
31 board's choosing of any administrative law judge's determination to  
32 discontinue or suspend medical services before a final determination of  
33 the board.

34 (3) Any difference in compensation rate paid during a period of tempo-  
35 rary disability and the rate of payment after classification of perma-  
36 nent disability shall be paid by the employer or credited to the employ-  
37 er in weekly installments during the continuance of payments for such  
38 permanent partial disability.

39 § 2. This act shall take effect immediately.